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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Review of the Commission's Regulations Governing Television Broadcasting	)	MM Docket No. 91-221
	)	
Television Satellite Stations Review of Policy and Rules	)	MM Docket No. 87-8
	)	

To: The Commission

COMMENTS OF THE NEWSPAPER ASSOCIATION OF AMERICA

The Newspaper Association of America ("NAA") hereby submits its comments in response to the Commission's pending Second Further Notice of Proposed Rule Making, FCC 96-438, released November 7, 1996, in the above-captioned proceeding. For the reasons set forth below, NAA urges the Commission promptly to take the steps necessary to repeal the anachronistic newspaper/broadcast cross-ownership restrictions. Those rules, which were adopted in 1975 notwithstanding the absence of any record evidence that cross-owned stations engaged in anti-competitive practices or otherwise failed to serve the public interest, clearly are unnecessary in the current highly diversified and technologically advanced media marketplace. Both newspaper publishers and broadcast station licensees -- television and radio alike -- face intense and ever-increasing competition from a rapidly expanding array of information providers, virtually all of which are free to operate on a "multi-channel" basis without governmental constraints on common ownership. Accordingly, the Commission should move forward quickly to eliminate the outdated and discriminatory newspaper/broadcast cross-ownership prohibition.

I. The NAA's Interest in the Proceeding

The NAA is a nonprofit organization representing the newspaper industry and over 1,500 newspapers in the United States and Canada. Most NAA members are daily newspapers; these members account for approximately 85 percent of U.S. daily circulation. NAA's membership also includes many nondaily U.S. newspapers and other newspapers published elsewhere in the western hemisphere as well as in Europe and the Pacific Rim.[1] Many of the NAA's members also hold licenses for broadcast stations, originally issued prior to the adoption of the newspaper/broadcast cross-ownership prohibition in 1975 and therefore "grandfathered" when the prospective ban was implemented.[2] The NAA serves the newspaper industry and its individual members in efforts to communicate and advocate the views and interests of newspapers

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[1] NAA was formed June 1, 1992 by the merger of the American Newspaper Publishers Association, the Newspaper Advertising Bureau, and five other marketing associations: the Association of Newspaper Classified Advertising Managers, International Circulation Managers Association, International Newspaper Advertising and Marketing Executives, Newspaper Advertising Co-op Network, and the Newspaper Research Council.

[2] See Broadcasting & Cable Yearbook 1996 at A-125 - A-132.

to all levels of government and to advance the interests of newspapers in First Amendment issues. In this capacity, NAA has participated in numerous Commission proceedings.

II. The Related Broadcast Ownership Proceedings

On November 7, 1996 the Commission released three notices of proposed rule making concerning (1) the local television ownership rules, including the television duopoly rule and the radio television cross-ownership rule, Second Further Notice of Proposed Rule Making in MM Docket Nos. 91-221/87-8, FCC 96-438 ("Local TV Ownership Second Further Notice"); (2) the broadcast attribution rules, which define what constitutes a "cognizable interest in applying the broadcast multiple ownership rules, Further Notice of Proposed Rule Making in MM Docket Nos. 94-150/92-51/87-154, FCC 96-436 ("Attribution Further Notice"); and (3) the national television ownership rule, Notice of Proposed Rule Making in MM Docket Nos. 96-222/91-221/87-8, FCC 96-437 ("National TV Ownership Notice"). In addition, on October 1, 1996, the Commission released a Notice of Inquiry, FCC 96-381 ("Notice of Inquiry" or "NOI"), initiating a proceeding to explore possible revisions to the Commission's policies concerning waiver of the newspaper/radio cross-ownership restriction.[3]

[3] The Commission has expressly recognized that these proceedings are interrelated:

> [T]he issues raised by the Attribution Further Notice are relevant to the newspaper/radio cross-ownership rule in that the attribution rule defines what constitutes a cognizable ownership interest in a radio station or daily newspaper. In addition, many of the same competition and diversity concerns that underlie the newspaper/radio cross-ownership restriction are also raised in our examination of the television duopoly

(continued...)

In this connection, NAA notes that in the Telecommunications Act of 1996, Congress directed the Commission to review all of its media ownership regulations biennially to determine whether they remain necessary.[4] That directive includes, of course, the newspaper/broadcast cross-ownership restrictions. In the above captioned proceeding, moreover, the Commission expressly invited parties to "comment on any specific ownership issues they believe the Commission should review in particular as part of its overall 1998 biennial review of these rules under the 1996 Act."[5]

III. The Need for Repeal of the Newspaper/Broadcast Cross-Ownership Rules

NAA is today filing detailed comments in response to the Notice of Inquiry on newspaper/radio cross-ownership.[6] For the reasons set forth more fully in those

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[3](...continued)

> rule and radio-television cross-ownership rule. Given the similarity of the issues raised in the NOI and the three rulemaking proceedings, [the FCC] believe[s] it is appropriate that they share the same comment and reply comment deadlines.

Order in MM Docket No. 96-197, released December 5, 1996.

[4] Telecommunications Act of 1996, Pub. L. No. 104-104, § 202(h), 110 Stat. 111-12 (1996) (In this biennial review, the Commission "shall repeal or modify any regulation it determines to be no longer in the public interest.") The Commission recognized this broader mandate in the Local TV Ownership Second Further Notice, at footnote 16.

[5] Local TV Ownership Second Further Notice, at n. 60. NAA also notes that the former restriction on repealing or reexamining the newspaper/broadcast rule is no longer contained in the FCC's appropriations legislation. See Notice of Inquiry, 11 FCC Rcd at 13006-07, n. 20. Accordingly, NAA submits, the FCC is free to use this proceeding to consider the repeal of the newspaper/broadcast cross-ownership prohibition.

[6] NAA's comments in response to the Notice of Inquiry are attached hereto (Attachment A) and are hereby incorporated by reference.

comments and summarized below, NAA urges the Commission not merely to liberalize the newspaper/radio waiver policy, but promptly to begin the long-overdue process of dismantling the newspaper/broadcast cross-ownership restrictions. Repeal of this anachronistic ban is necessary to give television and radio broadcasters and newspaper publishers the freedom to continue to compete effectively with cable and other multichannel providers, as well as with new print and computerized sources of news, information, and entertainment.

The newspaper/broadcast cross-ownership restrictions were adopted by the Commission in 1975 based solely upon speculative assumptions about diversity, without any record evidence that cross-owned stations engaged in anti-competitive practices or otherwise failed to serve the public interest. Historically, the FCC had encouraged the participation of newspaper publishers in the broadcast industry, and newspaper owners pioneered first AM and later FM and television broadcasting in many communities. In 1975, however, the FCC reversed course and adopted regulations prohibiting the joint ownership of a broadcast station and a daily newspaper in the same community. The record before the FCC at that time contained no concrete evidence to show that the ban on co-located newspaper/broadcast combinations would in fact promote diversity or otherwise serve the public interest. On the contrary, the sole basis cited for the cross-ownership ban was the FCC's expectation that it would serve to increase local diversity.

NAA submits that the "hoped for" gain in diversity that was the only premise for adoption of the ban in 1975 has been achieved, not through governmental intervention, but through technological developments and the explosive growth of competition in the information marketplace. For example, since the Commission instituted the cross-ownership limitations, both television and radio broadcasting have enjoyed continued growth and ever-increasing diversity. There are now over 12,000 licensed radio stations in the United States, and more than 1,500 licensed television stations. The healthy growth in broadcasting, moreover, has been complemented by remarkable gains both in penetration and in subscribership by the cable television industry. In 1976, only 17 percent of TV households subscribed to cable; today, cable is available to 97 percent of all U.S. households, and nearly two-thirds of all TV households subscribe. The maturation of the cable television industry, together with technological innovations such as direct broadcast satellite ("DBS") service, now ensure the availability of a multitude of independent and diverse media voices to American consumers. The entry of telephone companies into video programming and distribution services in their local service areas will further speed the growth of new voices in the media marketplace.

Other technological innovations over the past two decades also have opened the mass media marketplace to a host of competitive new media (e.g., wireless cable, open video systems and on-line computer services) which are expanding the available sources of information, news, and entertainment at an ever-increasing rate. These new media also compete with newspaper publishers and broadcasters for advertising revenues. In addition, direct mail advertising has grown at an exponential rate in recent years. Expenditures on direct mail in 1995 were nearly $33 billion, or 20.4 percent of all advertising expenditures, and nearly three times the amount spent on radio ads. Increasingly popular city, regional, and specialty magazines also have eroded newspapers' share of print advertising revenues while providing additional sources of information and opinion.

In this abundantly diverse and highly competitive mass media marketplace, the maintenance of these selective cross-ownership restrictions clearly is unnecessary, discriminatory, and unjustifiable. While in 1975 media owners generally were limited to controlling a single outlet in a community, today multiple ownership of same-service outlets is routinely allowed. For example, radio station owners can now hold licenses for up to eight radio stations in the same market. Moreover, newspapers and broadcast station owners are virtually alone among major information providers in facing an absolute governmental barrier to common ownership.

In the current media environment, cross-owners have every incentive to differentiate their newspaper and broadcast "products" in order to appeal to a larger total audience. Further, as the FCC itself has recognized, common ownership of media outlets may actually "enhance the quality of viewpoint diversity." In some circumstances, excluding TV and radio station owners from the local newspaper business in fact has undercut the diversity goal. Between 1988 and 1993, more than 100 daily newspapers failed throughout the United States. At least some of those papers might well have survived had local broadcasters been eligible to acquire struggling dailies in their home communities.

Given the explosion in the number and variety of competing media outlets, and considering the courts' recent heightened scrutiny of commercial speech restrictions, moreover, the perpetuation of the newspaper/broadcast cross-ownership ban clearly has serious constitutional implications. Although the rule was sustained against a First Amendment challenge in the 1970s, the information marketplace in which newspapers and broadcast stations compete has changed dramatically since the Supreme Court's decision. In fact, the FCC repeatedly has recognized the change in the level of competition in the mass media field in its decisions eliminating or relaxing most of its other ownership rules. Recent judicial actions strongly suggest that the courts today would require a far stronger showing than was made in 1975 to support such a direct limitation on the commercial speech rights of a particular class of citizens.

In sum, the newspaper/broadcast cross-ownership rule adopted by the FCC in 1975 was based not on hard evidence, but rather on a mere "hoped for" gain in diversity. Twenty years later, it cannot be said that the rule has served its intended goal. Today, broadcast stations and newspapers are unnecessarily handicapped by the outdated newspaper/broadcast cross-ownership rule. Initiating the necessary agency proceedings to repeal these restrictions would not only help preserve broadcast stations and newspapers as viable voices, but would help spur their evolution into more diversified and innovative competitors in today's technologically advanced multimedia marketplace.

Respectfully submitted,

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February 7, 1997

ATTACHMENT A

DUPLICATE

Before the
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In the Matter of	)	
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Newspaper/Radio Cross-Ownership Waiver Policy	)	MM Docket No. 96-197
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To: The Commission

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SUMMARY

The newspaper/broadcast cross-ownership restrictions were adopted by the Commission in 1975 based solely upon speculative assumptions about diversity, without any record evidence that cross-owned stations engaged in anti-competitive practices or otherwise failed to serve the public interest. If they were ever needed, these anachronistic restrictions are unnecessary in the modern highly diversified and technologically advanced media marketplace. Today, both newspaper publishers and broadcast station owners face intense competition from a rapidly expanding array of information providers, virtually all of which are free to operate on a "multi-channel" basis without significant governmental constraints on common ownership. Accordingly, the Newspaper Association of America ("NAA") asks the Commission to move forward quickly to initiate rulemaking proceedings looking toward outright repeal of the newspaper/broadcast restriction. In the interim, the FCC should adopt a broad and flexible waiver policy for newspaper/radio cross-ownership that will serve as a critical "first step" toward freeing publishers and broadcast station owners to function effectively as diversified and innovative competitors in the information marketplace.

Historically, the FCC encouraged the participation of newspaper publishers in the broadcast industry. In 1975, however, the FCC reversed course and adopted regulations prohibiting the joint ownership of a broadcast station and a daily newspaper in the same community. The record before the FCC contained no concrete evidence to show that the ban on co-located newspaper/broadcast combinations would in fact promote diversity or otherwise serve the public interest. The sole basis cited for the cross-ownership ban was the FCC's expectation that it would serve to increase local diversity.

The "hoped for" gain in diversity that was the only premise for adoption of the ban in 1975 has been achieved, not through governmental intervention, but through technological developments and the explosive growth of competition in the information marketplace. For example, since the Commission instituted the cross-ownership limitations, both television and radio broadcasting have enjoyed continued growth and ever-increasing diversity. There are now over 12,000 licensed radio stations in the United States, and more than 1,500 licensed television stations. The healthy growth in broadcasting, moreover, has been complemented by remarkable gains both in penetration and in subscribership by the cable television industry. In 1976, only 17 percent of TV households subscribed to cable; today, cable is available to 97 percent of all U.S. households, and nearly two-thirds of all TV households subscribe. The maturation of the cable television industry, together with technological innovations such as direct broadcast satellite ("DBS") service, now ensure the availability of a multitude of independent and diverse media voices to American consumers. The entry of telephone companies into video programming and distribution services in their local service areas will further speed the growth of new voices in the media marketplace.

Other new technological innovations also have opened the mass media marketplace to a host of competitive new media (e.g., wireless cable, open video systems and on-line computer services) which are expanding the available sources of information, news, and entertainment at an ever-increasing rate. These new media also compete with newspaper publishers and broadcasters for advertising revenues. In addition, direct mail advertising has grown at an exponential rate in recent years. Expenditures on direct mail in 1995 were nearly $33 billion, or 20.4 percent of all advertising expenditures, and nearly three times the amount spent on radio ads. Increasingly popular city, regional, and specialty magazines also have eroded newspapers' share of print advertising revenues while providing additional sources of information and opinion.

In this abundantly diverse and highly competitive mass media marketplace, the maintenance of these selective cross-ownership restrictions clearly is unnecessary, discriminatory, and unjustifiable. While in 1975 media owners generally were limited to controlling a single outlet in a community, today multiple ownership of same-service outlets is routinely allowed. For example, radio station owners can now hold licenses for up to eight radio stations in the same market. Newspapers and broadcast station owners are virtually alone among major information providers in facing an absolute governmental barrier to common ownership.

In the current media environment, cross-owners have every incentive to differentiate their newspaper and broadcast "products" in order to appeal to a larger total audience. Thus, as the FCC itself has recognized, common ownership of media outlets may actually "enhance the quality of viewpoint diversity." Moreover, in some circumstances, excluding TV and radio station owners from the local newspaper business actually has undercut the diversity goal. Between 1988 and 1993, more than 100 daily newspapers failed throughout the United States. At least some of those papers might well have survived had local broadcasters been eligible to acquire struggling dailies in their home communities.

Given the explosion in the number and variety of competing media outlets, and considering the courts' recent heightened scrutiny of commercial speech restrictions, the perpetuation of the newspaper/broadcast cross-ownership ban clearly has serious constitutional implications. Although the rule was sustained against a First Amendment challenge in the 1970s, the information marketplace in which newspapers and broadcast stations compete has changed dramatically since the Supreme Court's decision. In fact, the FCC repeatedly has recognized the change in the level of competition in the mass media field in its decisions eliminating or relaxing most of its other ownership rules. Recent judicial actions (such as those striking down the cable/telco ban and the ban on alcohol price advertising) strongly suggest that the courts today would require a far stronger showing than was made in 1975 to support such a direct limitation on the commercial speech rights of a particular class of citizens.

In short, the newspaper/broadcast cross-ownership rule adopted by the FCC in 1975 was based not on hard evidence, but rather on a mere "hoped for" gain in diversity. Twenty years later, it cannot be said that the rule has served its intended goal. Today, broadcast stations and newspapers are unnecessarily handicapped by the outdated newspaper/broadcast cross-ownership rule. Initiating a proceeding looking toward the repeal of these restrictions would not only help preserve broadcast stations and newspapers as viable voices, but would help spur their evolution into more diversified and innovative competitors in today's technologically advanced multimedia marketplace.

In the interim, and at a minimum, NAA urges the Commission to adopt a strong presumptive waiver policy for newspaper/radio cross-ownership that takes into account the enormous growth in the number and type of competing information providers. Specifically, NAA supports the use of a presumptive waiver standard that is based on the presence of a minimum number of voices, without regard to the market's numerical ranking. The

Commission should recognize as "voices" all broadcast stations -- both commercial and noncommercial -- and competing non-broadcast media such as daily and weekly newspapers, cable systems and other video program suppliers. Moreover, the FCC should adopt a threshold number of independent voices required to support a waiver that takes into account the proliferation of alternative media that are present in every market. The NAA also recommends that the Commission adopt a realistic geographic market definition, comparable to those used in the context of other cross-ownership rules.

Further, NAA urges the Commission to avoid becoming involved in "subjective" evaluations of the "strength" or "weight" of a particular voice in a given market. The availability of a sufficient number of voices, regardless of the identity of the speaker or the strength of the message, is the appropriate measure of diversity. Similarly, the Commission should not adopt any arbitrary "cap" on advertising market power; the wide array of alternative outlets currently available offsets any prospect of market dominance by newspapers or broadcast stations.

Where a sufficient number of voices exist, the Commission can rest assured that the public will have adequate access to a diversity of sources of information and opinion, and advertisers will have ample outlets for their advertising dollars. The FCC should refrain from imposing any additional barriers to waiving the rule, such as a "special circumstances" requirement, that are not applied in other cross-ownership situations. Finally, NAA urges the Commission to recognize that there are situations in which the public interest would be served by granting a waiver even if the minimum voices test is not met. For example, granting a waiver to preserve a failing station or to allow the continuation of a longstanding ownership pattern would be warranted regardless of the number of independent voices that will remain in the market.

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To: The Commission

COMMENTS OF THE NEWSPAPER ASSOCIATION OF AMERICA

The Newspaper Association of America ("NAA") hereby submits its comments in response to the Notice of Inquiry, FCC 96-381, released October 1, 1996[1] in the above-captioned proceeding ("Notice of Inquiry"), which was initiated by the Commission in order to explore possible revisions to its policies concerning waiver of the newspaper/radio cross-ownership restriction.

For the reasons set forth below, NAA urges the Commission to use this proceeding to begin the long-overdue process of dismantling the newspaper/broadcast cross-ownership restrictions. Those rules, which were adopted in 1975 notwithstanding the absence of any record evidence that cross-owned stations engaged in anti-competitive practices or otherwise failed to serve the public interest, clearly are unnecessary in the current highly diversified and technologically advanced media marketplace. Both newspaper publishers and broadcast station licensees face intense

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[1] 11 FCC Rcd 13003 (1996).

and ever-increasing competition from a rapidly expanding array of information providers, virtually all of which are free to operate on a "multi-channel" basis without governmental constraints on common ownership. Accordingly, the Commission should move forward quickly to initiate rulemaking proceedings looking toward outright repeal of the newspaper/broadcast cross-ownership prohibition. In the interim, in this proceeding, the FCC should adopt a broad and flexible new waiver policy for newspaper/radio cross-ownership that will serve as a critical "first step" toward elimination of this anachronistic restriction on the ability of newspaper publishers and broadcasters to function as diversified and innovative competitors in the marketplace of ideas.

I. THE NAA'S INTEREST IN THE PROCEEDING.

The NAA is a nonprofit organization representing the newspaper industry and over 1,500 newspapers in the United States and Canada. Most NAA members are daily newspapers; these members account for approximately 85 percent of U.S. daily circulation. NAA's membership also includes many nondaily U.S. newspapers and other newspapers published elsewhere in the western hemisphere as well as in Europe and the Pacific Rim.[2] Many of the NAA's members also hold licenses for broadcast stations, originally issued prior to the adoption of the newspaper/broadcast cross-

[2] NAA was formed June 1, 1992 by the merger of the American Newspaper Publishers Association, the Newspaper Advertising Bureau, and five other marketing associations: the Association of Newspaper Classified Advertising Managers, International Circulation Managers Association, International Newspaper Advertising and Marketing Executives, Newspaper Advertising Co-op Network, and the Newspaper Research Council.

ownership prohibition in 1975 and therefore "grandfathered" when the prospective ban was implemented.[3]

The NAA serves the newspaper industry and its individual members in efforts to communicate and advocate the views and interests of newspapers to all levels of government and to advance the interests of newspapers in First Amendment issues. In this capacity, NAA has participated in numerous Commission proceedings. NAA recently submitted comments on behalf of the newspaper industry in response to the Commission's Notice of Proposed Rulemaking in CC Docket No. 96-150, concerning the implementation of appropriate accounting safeguards to foster the development of electronic publishing pursuant to Section 274 of the Telecommunications Act of 1996. The American Newspaper Publishers Association ("ANPA"), one of NAA's predecessor organizations, similarly participated in numerous Commission proceedings affecting the interests of the newspaper industry, including the proceedings which led to the adoption of the newspaper/broadcast cross-ownership restrictions in 1975.[4]

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[3] See Broadcasting & Cable Yearbook 1996 at A-125 - A-132.

[4] See Second Report and Order in Docket No. 18110 (Amendment of Sections 73.34, 73.240, and 73.636 of the Commission's Rules Relating to Multiple Ownership of Standard, FM, and Television Broadcast Stations), 50 FCC2d 1046 (1975) ("Second Report and Order"), recon., 53 FCC2d 589 (1975), rev'd in part, Nat'l Citizens Comm. for Broadcasting v. FCC, 555 F.2d 938 (D.C. Cir. 1977), reinstated, Federal Communications Comm'n v. Nat'l Citizens Comm. for Broadcasting, 436 U.S. 775 (1978) ("FCC v. NCCB").

II. THE NEWSPAPER/BROADCAST CROSS-OWNERSHIP RESTRICTIONS WERE ADOPTED OVER TWO DECADES AGO BASED ONLY UPON SPECULATIVE ASSUMPTIONS ABOUT DIVERSITY, AND WITHOUT ANY RECORD EVIDENCE OF ANTI-COMPETITIVE CONDUCT BY CROSS-OWNERS.

Historically, the Commission encouraged the participation of newspaper publishers in the broadcasting industry. Thus, newspapers pioneered first AM service and, subsequently, FM and television service in many communities.[5] Indeed, even in its 1975 decision adopting the newspaper/broadcast cross-ownership rule, the Commission observed that many such newspaper-owned stations "began operation long before there was hope of profit and were it not for their efforts service would have been much delayed in many areas."[6]

Further, the FCC recognized that existing newspaper/broadcast cross-owners as a group had established "[t]raditions of service" from the outset, which had been continued.[7] Thus, prior to 1975, the Commission repeatedly determined, both in initial licensing actions and in granting countless license renewal applications, that the public interest would be served by common ownership and operation of broadcast facilities and co-located daily newspapers. Moreover, in the 22 years since the prospective ban was adopted, the agency has reaffirmed that finding many times in renewing the licenses of stations that are part of "grandfathered" combinations.

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5 See Second Report and Order, 50 FCC2d at 1074, 1078.

6 Id. at 1078.

7 Id.